STATE OF MICHIGAN

COURT OF APPEALS

MATTHEW HELTON, Plaintiff-Appellant, v LISA MARIE BEAMAN and DOUGLAS BEAMAN, Defendants-Appellees.	FOR PUBLICATION February 4, 2014 9:00 a.m. No. 314857 Oakland Circuit Court Family Division LC No. 2012-798218-DP Advance Sheets Version

Before: SAWYER, P.J., and O'CONNELL and K. F. KELLY, JJ.

O'CONNELL, J.

In this action brought under the Revocation of Paternity Act, MCL 722.1431 *et seq.*, plaintiff seeks to revoke defendants' acknowledgment of parentage of a nine-year-old child whom defendants have raised from birth. After a bench trial, the circuit court denied plaintiff's request and also denied plaintiff's requests for an order of filiation and parenting time. Plaintiff now appeals by right.

We conclude that the circuit court reached the correct result, albeit for incorrect reasons. "This Court ordinarily affirms a trial court's decision if it reached the right result, even for the wrong reasons." *Wickings v Arctic Enterprises, Inc*, 244 Mich App 125, 150; 624 NW2d 197 (2000). We affirm on grounds other than those relied on by the circuit court.

I. FACTS AND PROCEDURAL HISTORY

Defendants, Lisa and Douglas Beaman, have been in a relationship for more than 10 years. In the fall of 2002, they separated for a few weeks. During those weeks, Lisa had a brief sexual relationship with plaintiff, Matthew Helton. Lisa and Douglas then reunited, but did not marry. In June 2003, Lisa gave birth to the child who is the subject of this action. Douglas accompanied Lisa to the hospital for the child's birth. While at the hospital, both defendants

signed an affidavit of parentage that established Douglas as the child's father.[1] The child's birth certificate identifies both defendants as the child's parents.

Defendants began raising the child as part of their family, along with three other children. When the child was an infant, defendants allowed Helton to see the child periodically. When the child was approximately two months old, Helton asked to have DNA paternity testing conducted for the child. Defendants agreed to allow the testing, which was performed in 2003. Defendants opted to halt Helton's interaction with the child until he obtained the DNA results.

Although Helton planned to pay for the DNA testing, he failed to make full payment to the DNA laboratory for three years. Because of Helton's delay in payment, the parties did not receive the DNA results until 2006. The results established that Helton is the child's biological father. After receiving the DNA results, Helton visited the child a few times. Helton's visits then ceased. There was conflicting testimony at trial about whether Helton voluntarily stopped visiting the child or defendants decided against allowing further visits.

Four years after receiving the DNA results, when the child was seven years old, Helton brought suit against defendants seeking an order of filiation and parenting time with the child. By this time, the child had not visited with Helton for several years. While Helton's suit was pending, defendants married. The circuit court subsequently dismissed Helton's suit by stipulation.[2]

When the child was nine years old, Helton brought suit against defendants under §§ 7 and 13 of the newly enacted Revocation of Paternity Act, MCL 722.1437 and 722.1443. Helton submitted the DNA results to the circuit court and moved for summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact). The circuit court found that although the DNA results proved that Helton was the child's biological father, the DNA results standing alone were insufficient to establish by clear and convincing evidence that defendants' acknowledgment of parentage should be set aside.

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[1]This Court could not locate the affidavit of parentage in the electronic record. For purposes of this opinion, the Court has assumed that the affidavit was duly signed and notarized and was properly executed and filed in keeping with the requirements §§ 3 and 5 of the Acknowledgment of Parentage Act, MCL 722.1003 and 722.1005. To be consistent with the terms used in the Acknowledgment of Parentage Act and the Michigan Department of Community Health forms, we refer to the document that defendants signed in the hospital as the "affidavit of parentage" and to the legal record on file with the Michigan Office of the State Registrar as the "acknowledgment of parentage" See Department of Community Health, Affidavit of Parentage <http://www.michigan.gov/documents/Parentage_10872_7.pdf> (accessed November 19, 2013) [http://perma.cc/3YMG-BPMK]; MCL 722.1003 and 722.1005.

[2] Because of Helton's delay in challenging paternity, I agree with Judge KELLY that the equitable defense of laches applies in this case.

The circuit court later held a bench trial and then issued an opinion and order. In the opinion, the court stated that it had weighed the credibility of the parties and that it found Lisa's testimony more credible than Helton's testimony with regard to Helton's failure to continue a relationship with the child. The court specifically found that Helton had no parental relationship with the child. The court concluded that the evidence established that "it is not in [the child's] best interest to grant the relief requested by Plaintiff." Citing MCL 722.1443(4), the court denied Helton's request to revoke the acknowledgment of parentage. The court also denied Helton's requests for an order of filiation and parenting time.

II. STANDARD OF REVIEW

In an action to set aside an acknowledgment of parentage, the circuit court must make factual findings concerning the sufficiency of the plaintiff's supporting affidavit. See MCL 722.1437(3); see also *In re Moiles*, 303 Mich App 59, 66-67; 840 NW2d 790 (2013), lv pending.[*] If the plaintiff's affidavit is sufficient, the circuit court must then determine whether to revoke the acknowledgment of parentage. See MCL 722.1437(3) and 722.1443(5).

We review for clear error the circuit court's factual findings on the sufficiency of the plaintiff's affidavit; we also review for clear error the circuit court's determination on the revocation of the acknowledgment of parentage. See *Moiles*, 303 Mich App at 66.[3] To the extent that the circuit court made conclusions of law, those conclusions are reviewed de novo. *Id*.

III. ANALYSIS OF THE CIRCUIT COURT'S ORDER

A. SUFFICIENCY OF HELTON'S AFFIDAVIT[4]

A plaintiff filing an action for revocation of an acknowledgment of parentage must submit an affidavit attesting to the basis for the revocation action. MCL 722.1437(2). The plaintiff must state facts that constitute at least one of the five factors listed in Subsection (2) of MCL 722.1437:

> (a) Mistake of fact.

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[*] *Moiles* was reversed in part and vacated in part after the release of this opinion. See *In re Moiles*, 495 Mich 944 (2014)—REPORTER.

[3] The *Moiles* case did not directly present the issue of the standard of review for a circuit court's determination on revocation. *Moiles*, 303 Mich App at 65-66. However, it appears from the *Moiles* decision that the clear-error standard applies to the determination. *Id*. at 66.

[4] The parties on appeal do not address the sufficiency of Helton's affidavit. We address the affidavit because a determination of the sufficiency of the affidavit is a requisite step in the analysis prescribed by MCL 722.1437. See *Moiles*, 303 Mich App at 67.

(b) Newly discovered evidence that by due diligence could not have been found before the acknowledgment was signed.

(c) Fraud.

(d) Misrepresentation or misconduct.

(e) Duress in signing the acknowledgment. [MCL 722.1437(2).]

In turn, Subsection (3) of the same section requires the circuit court to make a determination of the sufficiency of the plaintiff's affidavit before ruling on the revocation request:

> *If the court in an action for revocation under this section finds that an affidavit under subsection (2) is sufficient*, the court shall order blood or tissue typing or DNA identification profiling as required under [MCL 722.1443(5)]. The person filing the action has the burden of proving, by clear and convincing evidence, that the acknowledged father is not the father of the child. [MCL 722.1437(3) (emphasis added).]

In this case, Helton's affidavit listed three grounds for revocation: mistake of fact, misconduct, and fraud. Specifically, Helton attested that "[t]he DNA test report demonstrates that there was a mistake of fact, in that [Douglas] is not the Father." Helton further alleged that defendants engaged in misconduct or fraud by executing the acknowledgment of parentage. Helton attested that he had sexual relations with Lisa in September 2002 and that Lisa knew he might be the father of the child born in June 2003. Helton went on to attest that Lisa "induced" Douglas to execute an acknowledgment of parentage.

The circuit court did not directly rule on the sufficiency of Helton's affidavit.[5] After hearing the trial testimony, the circuit court implicitly rejected Helton's assertions of misconduct and fraud. The court found that when the child was born, both defendants believed that Douglas was the child's biological father. Although Helton disputed defendants' testimony regarding their belief that Douglas was the biological father, we defer to the circuit court's credibility determinations. MCR 2.613(C); *Woodington v Shokoohi*, 288 Mich App 352, 355; 792 NW2d 63 (2010). Given that defendants believed Douglas to be the child's biological father at the time they signed the affidavit of parentage, Helton's assertions of misconduct and fraud are insufficient to support his action for revocation.[6]

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[5] At the time the circuit court denied Helton's summary disposition motion, Helton had not yet submitted the affidavit. Helton submitted the affidavit in an amended complaint.

[6] We need not consider whether Helton's assertions of misconduct and fraud would be sufficient if the evidence demonstrated that defendants knew or had reason to know that Douglas was not the biological father at the time they signed the affidavit. Compare *Moiles*, 303 Mich App at 72 (affidavit of parentage attests to belief that male signatory is "natural father") with *Moiles*, 303

In contrast, Helton's assertion of mistake of fact is a sufficient basis to proceed with the revocation action. The DNA evidence supports Helton's attestation that he is the child's biological father, and the trial testimony indicates that defendants mistakenly believed that Douglas was the child's biological father. When a defendant's decision to sign an affidavit of parentage was based in part on a mistaken belief that he is the child's biological father, that mistaken belief constitutes a mistake of fact sufficient to proceed with a revocation action. *Bay Co Prosecutor v Nugent*, 276 Mich App 183, 189-190; 740 NW2d 678 (2007) (interpreting MCL 722.1011(2), now repealed and replaced by MCL 722.1437(2)). Accordingly, Helton's affidavit in this case was sufficient to allow the circuit court to proceed to determine whether to revoke the acknowledgment of parentage.

B. STANDARDS FOR REVOCATION UNDER THE REVOCATION OF PATERNITY ACT

1. THE ACKNOWLEDGMENT OF PARENTAGE ACT

The Acknowledgment of Parentage Act, MCL 722.1001 *et seq*., confers the status of natural and legal father upon a man who executes an affidavit of parentage. *Sinicropi v Mazurek*, 273 Mich App 149, 152; 729 NW2d 256 (2006). The affidavit of parentage provides notice to the male signatory that he has the responsibility to support the child. MCL 722.1007(f). In addition, a valid acknowledgment of parentage may serve as the basis for child support, custody, and parenting time. MCL 722.1004. Once the acknowledgment of parentage is complete, the child has "the identical status, rights, and duties of a child born in lawful wedlock effective from birth." *Id*.

A man who executes an acknowledgment of parentage is known for legal purposes as the "acknowledged father." MCL 722.1433(1). In contrast, a man who obtains an order of filiation is known for legal purposes as an "affiliated father." MCL 722.1433(2). The existence of a valid acknowledgment of parentage by one man precludes a court from entering an order of filiation for a different man. *Sinicropi*, 273 Mich App at 164-165. In other words, a child may have only one legal father. *Id*. at 164. As a result, the circuit court in this case could not grant an order of filiation in favor of Helton unless the court first revoked defendants' acknowledgment of parentage.

2. BEST-INTEREST FACTORS IN § 13(4) OF THE REVOCATION OF PATERNITY ACT

In *Moiles*, 303 Mich App at 76, this Court held that a circuit court is not required to make a best-interest determination under MCL 722.1443(4) when revoking an acknowledgment.[7]

Mich App at 79 (WHITBECK, P.J., dissenting in part) (affidavit of parentage does not include attestation that male signator is "biological father.").

[7] MCL 722.1443(4) reads:

> A court may refuse to enter an order setting aside a paternity determination or determining that a child is born out of wedlock if the court finds evidence that the order would not be in the best interests of the child. The court shall state its reasons for refusing to enter an order on the record. The court may consider the following factors:

Because we are bound by *Moiles*, we conclude that the circuit court in this case mistakenly applied the best-interest factors in MCL 722.1443(4) when it denied Helton's request to revoke the acknowledgment of parentage.[8]

3. APPLICABLE STANDARDS UNDER THE REVOCATION OF PATERNITY ACT

Given that the circuit court in this case mistakenly applied the best-interest factors in the Revocation of Paternity Act, MCL 722.1443(4), we must determine whether the error requires reversal of the circuit court's decision. We first consider the controlling sections of the act.

Nothing in the act indicates that DNA results, standing alone, are sufficient to require revocation of an acknowledgment of parentage. In § 7(3) of the act, the Legislature mandated that a circuit court order DNA testing if the court determines that the plaintiff's supporting affidavit fulfills one of the requisite factors for proceeding with a revocation action. MCL 722.1437(3). In the same subsection, the Legislature mandated that the plaintiff in a revocation action "has the burden of proving, by clear and convincing evidence, that the acknowledged father is not the father of the child." *Id*. Section 7 then addresses the administrative process for revoking an acknowledgment of parentage and requires the clerk of court to forward a revocation order to the State Registrar of the Department of Community Health. MCL 722.1437(4).

Section 7 is silent with regard to the legal standard for a circuit court to apply when deciding whether to revoke an acknowledgment of parentage. "When a statute expressly mentions one thing, it implies the exclusion of other similar things." *Moiles*, 303 Mich App at

> (a) Whether the presumed father is estopped from denying parentage because of his conduct.
>
> (b) The length of time the presumed father was on notice that he might not be the child's father.
>
> (c) The facts surrounding the presumed father's discovery that he might not be the child's father.
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> (d) The nature of the relationship between the child and the presumed or alleged father.
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> (e) The age of the child.
>
> (f) The harm that may result to the child.
>
> (g) Other factors that may affect the equities arising from the disruption of the father-child relationship.
>
> (h) Any other factor that the court determines appropriate to consider.

[8] But for *Moiles*, I would agree with Judge KELLY that "[a]n order revoking an acknowledgment of parentage, is plainly an order 'setting aside a paternity determination' and, therefore, subject to a best-interest analysis under MCL 722.1443(4)." *Post* at 1. However, because the legal standards for child custody cases can be applied in this case, I see no immediate need to call for a conflict panel. An appeal in our Supreme Court will produce a more efficient resolution of these legal issues.

75. If the Legislature had intended to decree that a DNA test indicating that the plaintiff is the father will result in an automatic revocation of an acknowledgment of parentage, the Legislature could have made that decree specific in the statute.[9] Absent any indication that a revocation order is automatic when a plaintiff submits such DNA results, we decline to interpret the statute as establishing an unsupported legal standard.

Section 13(5) of the act confirms that the legal standards for revocation of an acknowledgment of parentage require consideration of factors other than DNA results. MCL 722.1443(5). That statute reads:

> The court shall order the parties to an action or motion under this act to participate in and pay for blood or tissue typing or DNA identification profiling to assist the court in making a determination under this act. Blood or tissue typing or DNA identification profiling shall be conducted in accordance with section 6 of the paternity act, 1956 PA 205, MCL 722.716. *The results of blood or tissue typing or DNA identification profiling are not binding on a court in making a determination under this act.* [*Id*. (emphasis added); see also *Moiles*, 303 Mich App at 67.]

The Legislature's decision that DNA results are not binding on a court making a revocation determination is consistent with the predecessor revocation statute. Before the enactment of the Revocation of Paternity Act in 2012, revocation claims were governed by § 11 of the Acknowledgment of Parentage Act, MCL 722.1011 (repealed by 2012 PA 161). When enacting the new Revocation of Paternity Act, the Legislature adopted much of the language of the predecessor statute with regard to claims for revocation of acknowledgment of parentage. Compare former MCL 722.1011 with MCL 722.1437. The Legislature did not, however, adopt the predecessor statute's legal standard for revocation, which stated as follows: "The party filing the claim for revocation has the burden of proving, by clear and convincing evidence, that the

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[9] An automatic revocation of parentage upon receipt of DNA results indicating that the plaintiff is the father would be contrary to the history and purpose of Michigan's laws, which require consideration of children's best interests before ordering unwarranted and traumatic disruptions in children's lives. See, e.g., MCL 712A.19b(5); MCL 722.23. Our Legislature adhered to this history and purpose in the Revocation of Paternity Act. For example, § 13(12) of the act allows circuit courts to extend, under certain circumstances, the limitations period for filing an action. MCL 722.1443(12). Once a circuit court extends the time for filing an action, the statute imposes a burden on the party filing the request for the extension to prove "by clear and convincing evidence, that granting relief under this act will not be against *the best interests of the child considering the equities of the case*." MCL 722.1443(13) (emphasis added).

To impose an automatic revocation would not only be contrary to the language in the Revocation of Paternity Act, but would allow the absurdity of revoking the parental status of an acknowledged father in favor of, for example, a long-absent biological father who has a history of crimes against children.

man is not the father and that, *considering the equities of the case, revocation of the acknowledgment is proper*." MCL 722.1011(3), as enacted by 1996 PA 305 (emphasis added).

When the Legislature repealed the predecessor equitable legal standard for revocation claims, it replaced the equitable standard with the statutory declaration that DNA results are not binding on a court making a determination under the new act. MCL 722.1443(5). That statutory declaration gives circuit courts discretion to consider other factors when determining whether to revoke an acknowledgment of parentage. Because the Legislature did not identify the relevant factors or the legal standard that governs the circuit court's discretion, we consider analogous caselaw to determine the applicable legal standard for assessing the circuit court's decision in this case.

The legal standards in cases involving a change in child custody are well established, and our Courts have applied those standards to resolve issues similar to the issue presented in this case. The change-in-custody standards are designed to preserve stability for the child and protect against unwarranted and disruptive changes in the child's life. See *In re AP*, 283 Mich App 574, 592; 770 NW2d 403 (2009). Given that the change-in-custody standards are suited to the particular facts in this case, we assess the circuit court's decision on the basis of those factors.

This Court explained the legal standards that control a change-in-custody decision in *AP*, 283 Mich App at 600-602:

> [T]he party seeking a change of custody must first establish proper cause or change of circumstances by a preponderance of evidence. The movant must make this requisite showing before the trial court determines the burden of persuasion to be applied and conducts the evidentiary hearing.
>
> In determining the applicable burden of persuasion, the court must first determine whom the custody dispute is between. If the dispute is between the parents, the presumption in favor of the established custodial environment applies. MCL 722.27(1)(c) embodies this presumption and provides:
>
> > (1) If a child custody dispute has been submitted to the circuit court as an original action under this act or has arisen incidentally from another action in the circuit court or an order or judgment of the circuit court, for the best interests of the child the court may do 1 or more of the following:
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> > * * *
> >
> > (c) Modify or amend its previous judgments or orders for proper cause shown or because of change of circumstances until the child reaches 18 years of age and, subject to section 5b of the support and parenting time enforcement act, 1982 PA 295, MCL 552.605b, until the child reaches 19 years and 6 months of age. The court shall not modify or amend its previous judgments or orders or issue a new order so as to change the established

> custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interest of the child.
>
> As a threshold matter to determining which party will carry the burden of rebutting the presumption by clear and convincing evidence, the court is required to look into the circumstances of the case and determine whether an established custodial environment exists. A child's custodial environment is established "if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort." MCL 722.27(1)(c). In making this determination, a court must also consider the "age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship . . . ." *Id*. If an established custodial environment exists with one parent and not the other, then the noncustodial parent bears the burden of persuasion and must show by clear and convincing evidence that a change in the custodial environment is in the child's best interests. We note that in circumstances in which an established custodial environment exists with both parents, the party seeking to modify the custody arrangement bears the burden of rebutting the presumption in favor of the custodial environment established with the other parent. [Citations omitted.]

Certain aspects of these legal standards require modification for application in this case. First, the Revocation of Paternity Act indicates that a mistake of fact is a change in circumstance that warrants consideration of a claim for revocation. MCL 722.1437(2)(a). In this case, Helton has established a mistake of fact regarding the biological paternity of the child. As a result, we find for purposes of this case that a change in circumstance exists. Second, with regard to the applicable burden of persuasion, the Revocation of Paternity Act places Helton (as biological father) and Douglas (as acknowledged father) in equivalent litigation postures. See MCL 722.1437(3). Accordingly, it is appropriate to use the burden of persuasion applicable to disputes between parents, which results in a presumption in favor of maintaining the child's established custodial environment. See *AP*, 283 Mich App at 600-601.

In this case, the child has an established custodial environment with defendants. To alter the established custodial environment, Helton would have to present clear and convincing evidence that a change in the custodial environment is in the child's best interests under MCL 722.23. In a typical case, we would remand for presentation of evidence on the child's best interests under that statute. In this case, however, the record is sufficient to determine that a change in the established custodial environment would not be in the child's best interest. The statutory best-interest factors to be considered in change of custody cases are

> (a) The love, affection, and other emotional ties existing between the parties involved and the child.
>
> (b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.

(c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

(d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

(e) The permanence, as a family unit, of the existing or proposed custodial home or homes.

(f) The moral fitness of the parties involved.

(g) The mental and physical health of the parties involved.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.

(j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents.

(k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

(*l*) Any other factor considered by the court to be relevant to a particular child custody dispute. [MCL 722.23.]

Given that defendants have raised the child from birth and that Helton has had little to no meaningful interaction with the child, the record favors defendants on Factor (a) (emotional ties between the parties and the child) and on Factor (d) (the length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity). Even if the record were equivocal with regard to the remaining factors, these two best-interest factors plainly favor maintaining the custodial environment the child has enjoyed thus far in life. We therefore conclude that in this case, the circuit court properly denied Holton's action for revocation of parentage.

Affirmed.

/s/ Peter D. O'Connell